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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,346	12/08/2003	George Roussos	014442-000002a	1345
24239	7590	05/30/2006		
MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709			EXAMINER NAKARANI, DHIRAJLAL S	
			ART UNIT 1773	PAPER NUMBER
DATE MAILED: 05/30/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/707,346

Applicant(s)

ROUSSOS, GEORGE

Examiner

D. S. Nakarani

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25,27 and 28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-25,27 and 28 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The disclosure is objected to because of the following informalities: The specification as filed has numerous spelling and grammatical errors. As for example, paragraph 0026, line 1, the phrase "are copolymers" should read -- is a copolymer --, line 2, the phrase "alpha olefins, the alpha olefins" should be -- alpha olefins. The alpha olefins --. Paragraph 0027, line 2, the phrase "alpha olefins the alpha olefins" should be -- alpha olefins. The alpha olefins --. Paragraph 0028, line 2, the phrase "copolymers, the alpha olefins" should read -- copolymers. The alpha olefins --. Paragraph 0041, line 3, the word "on" should read -- one --. Paragraph 0048, line 5, "ethyleneacetate" should read -- ethylene vinyl acetate --. Applicant is requested to review entire specification for additional errors. All corrections should be made without introducing new matters.

Appropriate correction is required.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 18 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as filed fail to provide support for changing the phrase “70% white TiO₂” to the phrase -- 70% by weight white TiO₂ -- in claim 18 and changing all recited “%” to - % by weight -- in claim 23. Applicant has not pointed out where the support for these changes can be found in the specification as filed. In absence of showing support in the original specification these changes constitute new matter. Applicant may make changes in the claims and in the specification by submitting data sheet(s) of the trademark materials having publication date on or before the effective filing date of this application.

5. Claims 1-25, 27 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “ethylene ester” wherever occurs in the claim renders claim(s) indefinite. It is not clear what is meant by the phrase “ethylene ester”. Clarification and/or correction requested.

Claim 1, line 7, the word “and” should be changed to the word -- or -- for proper markush group and line 10, the phrase “and/or” should read – or – for proper markush group.

Claim 9, line 4, the word “and” should read the word – or – for proper markush group.

Claims 12 and 14, line 2, the phrase “alpha-olefin plastomer copolymer” renders claims indefinite because it is not clear whether recited alpha-olefin plastomer copolymer is in addition

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to one of recited sealing layer polymers in claim 1 or alpha-olefin plastomer copolymer is one of the recited sealing layer polymers in claim 1? If it is one of the recited sealing layer polymers, then it lacks clear antecedent basis since it is not recited in the claim 1.

Claims 13 and 14 line 2, the phrase “ethylene-vinyl acetate copolymer” renders claims indefinite because it is not clear whether recited ethylene-vinyl acetate copolymer is in addition to one of recited sealing layer polymers in claim 1 or ethylene-vinyl acetate copolymer is one of the recited sealing layer polymers in claim 1? If it is one of the recited sealing layer polymers, then it lacks clear antecedent basis since it is not recited in the claim 1.

Claim 18, line 6, the word “and” should be changed to the word -- or -- for proper markush group and line 9, the phrase “and/or” should read – or – for proper markush group.

Claim 19, line 2, the phrase “such as to improve the machinability or other properties” renders claim indefinite. It is not clear how to determine amount of additives to improve which other specific property and improve over what?

Claim 23, recited abbreviations: MFI, VA, EVA, EMA, MA and MA-PVDC should be spelled out. Also wherever necessary dimension of density and melt flow index should be inserted with showing support and without introducing new matter.

Applicant is requested to NOTE that in the claims many places layer forming polymers are in plural form, only as example in claim 1, the member “chemically modified polyethylenes” means that the layer is formed of more than one chemically modified polyethylene. In other word layer is formed of a mixture of at least two different chemically modified polyethylenes. If applicant is trying to claim a layer made of a single chemically modified polyethylene, then

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applicant is requested to carefully consider to recite all polymers in singular form and when desired more than one polymer to recite in plural form.

Claim 23 contains the trademark/trade name Affinity PL-1880 from Dow, EVATANE 1003 VN4 material, ELVAX 3165(DUPONT), ELVAX 3190(DUPONT), LOTRYL 29MA03, LOTRYL 24MA005 and XU 32019.1 OL. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe alpha-olefin plastomer copolymer, ethylene-vinyl acetate copolymer, EMA and MA-PVDC copolymer, respectively, and, accordingly, the identification/description is indefinite.

6. Claims 1-17, 19-22, 24, 25, 27 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshii et al (U. S. Patent 6,146,726) in view of Bekele (U. S. Patent 4,909,726) and Lind et al (U. S. Patent 6,074,715).

Yoshii et al disclose a heat-shrinkable multi-layer film comprising sealing layer (C) made of linear ethylene-1-octene copolymer such as Affinity PL – 1880 (Table 1, and col. 5, line 1 to col. 6, line 40), outer layer (A) composition also can be same as layer (C) (Col. 7, lines 45-51), a

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barrier layer (B) of copolymer of vinylidene chloride and vinyl chloride and/or methylacrylate (Col. 8, lines 20-32), intermediate layers D1 and D2 (Col. 8, lines 54 to col.9, line 50) and adhesive layers, as needed, made of polymer such as EVA, acid modified LLDPE etc (Col. 9, lines 51-67). Yoshii et al disclose irradiating film (Col. 9, lines 22-50 and col. 12, lines 61-67). Yoshii et al teach addition of additive such as silica and erucamide to the sealing layer (C) (Col. 12, lines 22-45 and Examples 1, 5, 6, 7 etc.). Yoshii et al disclose production of film by co-extrusion and double bubble process (Example 1 and col. 12, lines 46-53). Yoshii et al disclose that their film can be used for packaging processed meat products, fresh red meat and cheeses (Col. 1, lines 4-28). Yoshii et al fail to disclose sealing layer containing linear ethylene-1-octene copolymer blended with EVA, intermediate layer containing pigment and hot blown film for chub packaging.

Bekele discloses a multilayer film hot blown films suitable for chub packaging (Col. 1, lines 10-11). Bekele also discloses a longitudinally oriented multilayer film (Col. 7, lines 48-49). Lind et al disclose a heat shrinkable barrier film comprising barrier layer of vinylidene chloride methacrylate copolymer and sealing layer (28) of a mixture of linear low density polyethylene made with constrained geometry catalyst or metallocene single site catalyst (Col. 3, line 44 to col.6, line 7). Addition of EVA to linear low density polyethylene provides improved adhesion (Col. 7, lines 27-46). Lind et al also suggest addition of pigment to make pigmented layer (Col. 1, lines 25-36).

Therefore it would have been obvious to a person of ordinary skill in the art at the time of this invention made to utilize disclosure of Bekele and Lind et al in the invention of Yoshii et al

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to make sealing layer of a blend of linear low density polyethylene and EVA for adhesion and film for packaging meat as disclosed by Bekele.

7. Claims 18 and 23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st and 2nd paragraph, set forth in this Office action.

Claims are allowable because art of record does not teach or suggest claimed multilayer film having one or more intermediate layers containing claimed amount of white titanium dioxide pigment (Claim 18) and claimed multilayer film having claimed layers with claimed specific composition (Claim 23).

8. Applicant's arguments filed March 3, 2006 have been fully considered but they are not persuasive. In reference to rejection of claims 18, 22 and 23 under 35 USC, second paragraph, applicant has amended claims and states that the percentages in the claims are "by weight". Support is throughout the specification, and also, it noted that it is well known that the commercial products as purchased are percentages "by weight".

These arguments are unpersuasive because the Examiner is unable to find support for percentages "by weight" throughout specification as filed. Applicant has not specifically pointed out where the support can be found. There is nothing on record supporting statement that the commercial products as purchased are percentages "by weight".

In reference to rejection of claims 1-10, 12, 15, 16, 19-22, 25 and 26 under 35 USC 102(b) as being anticipated by Yoshii et al (U. S. Patent 6,146,726) and rejection of claims 7, 11, 13, 14, 17, 27 and 28 under 35 USC 103(a) as being obvious over Yoshii et al (U. S. Patent

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6,146,726) in view of Bekele (U. S. Patent 4,909,726) and Lind et al (U. S. Patent 6,074,715), applicant mainly argues that the hot blown films are not heat-shrinkable. For the chub packaging application heat shrinkability is not a desirable feature. Further applicant states that the connector “consisting essentially of” excludes the film having polyamide, copolyamide, and nylon 6 and also exclude a lay-flat self-welding film shown by Bekele.

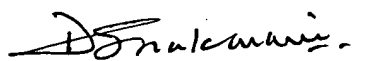
These arguments are unpersuasive because the invention as claimed after connector “consisting essentially of” is an open language and do not exclude polyamide, copolyamide and nylon 6 as argued. The invention as claimed requires at least one sealing layer made of recited polymers and at least one barrier layer comprising polyvinylidene chloride polymers and at least one intermediate layer of recited polymers. That means claims are open for additional sealing layer, barrier layer and intermediate layer can be made of any materials including polyamide, copolyamide and nylon 6. There is nothing in the specification stating that heat shrinkable film is not desirable and cannot be used for chub packaging application. Furthermore Bekele does not mention that heat shrinkable film is not desirable for chub packaging. Bekele’s Example 5 includes longitudinally oriented film. The longitudinally oriented film considered as heat shrinkable film unless shown otherwise.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. S. Nakarani whose telephone number is (571) 272-1512. The examiner can normally be reached on Tuesday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



D. S. Nakarani
Primary Examiner
Art Unit 1773

DSN
May 25, 2006.